

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ADAM W. RACKERS

Respondent

v.

JENNIFER A. RACKERS

Appellant

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DOCKET NUMBER WD79077

DATE: October 4, 2016

Appeal From:

Circuit Court of Cole County, MO
The Honorable Daniel Richard Green, Judge

Appellate Judges:

Division One
Anthony Rex Gabbert, P.J., Thomas H. Newton, and Alok Ahuja, JJ.

Attorneys:

Paul Graham, Jefferson City, MO

Counsel for Appellant

Attorneys:

David Bandre, Jefferson City, MO

Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ADAM W. RACKERS, Respondent, v.
JENNIFER A. RACKERS, Appellant

WD79077

Cole County

Before Division One Judges: Gabbert, P.J., Newton, and Ahuja, JJ.

The marriage of A. Rackers and J. Rackers was dissolved in 2008. There were two children born of the marriage. The parties were awarded joint legal and physical custody with equal custodial time. A. Rackers was ordered to pay J. Rackers \$833.00 in child support. Subsequently, the dissolution was modified in 2011 reducing A. Rackers's child support payment and awarding him a 50% credit on Line 11 of the Form 14. After the modification J. Rackers was found to be disabled by the Social Security Administration.

In 2014, J. Rackers filed a second modification. During the subsequent hearing J. Rackers testified that her gross monthly income was \$1,068.90, meaning A. Rackers should not be granted a Line 11 credit; that she should be granted the right of first refusal when A. Rackers is unavailable during his custodial time with the children; and that A. Rackers should pay all or part of her attorney fees. The trial court denied all three of J. Rackers's requests. J. Rackers appeals.

REVERSED IN PART, AFFIRMED IN PART.

Division One holds:

In the first point, J. Rackers argues that the trial court erred in granting A. Rackers a 50% discount at Line 11 of Form 14 because her income was less than \$1,700 and neither exception to the income threshold was satisfied. We agree.

When determining the appropriate child support amount, the trial court must comply with the directions and comments for use of Form 14. In regards to Line 11, a caveat specifically addresses the income threshold for a Line 11 adjustment explaining that it will not be allowed unless the adjusted monthly gross income of the parent receiving support exceeds the provided amount. The caveat also contains two exceptions: (1) if the parent receiving support is unemployed or underemployed because their expenses are paid by a person with whom they cohabit or (2) if the adjusted gross monthly income of the parent obligated to pay support is below the income threshold. Here, the Form 14 reports J. Rackers's monthly income as \$1,690. In addition, neither of the two caveat exceptions apply. Thus, the trial court erred in awarding A. Rackers a Line 11 credit for his child support payments. J. Rackers's first point is granted.

In the second point, J. Rackers argues that the trial court erred in denying her request to modify the parenting plan granting her a right of first refusal when A. Rackers is unavailable to exercise visitation due to his military orders. We disagree.

A trial court is free to believe or disbelieve all, part, or none of a witness's testimony. At the second modification hearing J. Rackers suggested that A. Rackers was unavailable for a range of one to five days each month. A. Rackers, however, testified that he is usually never away overnight, and if he is, the children stay with his parents. The appellate court gives deference to the trial court's determination of witness credibility, viewing the evidence and all inferences flowing therefrom in the light most favorable to the judgment. The record does not provide additional evidence or authority indicating that the trial court's failure to include a right of first refusal in the parenting plan constitutes a reversible error. Point two is denied.

In the third point, J. Rackers argues that the trial court erred in denying her request for attorney fees. We disagree.

Generally, parties to a domestic relations case are responsible for paying their own attorney's fees. When considering an award of attorney fees, the trial court should consider the financial resources of both parties, the merits of the case, and the actions of the parties during the course of action. The fact that one party makes more than the other does not compel an award of attorney fees. Here, there is no evidence that the trial court abused its discretion in denying J. Rackers's request stating that there are no legitimate grounds for the award. Point three is denied.

Therefore, we remand this modification to the trial court to reverse the Line 11 adjustment awarded to A. Rackers while affirming the exclusion of the first right of refusal and the denial of J. Rackers's request for attorney fees.

Opinion by Thomas H. Newton, Judge

October 4, 2016

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